



COUNTY OF LOS ANGELES
Internal Services Department

1100 North Eastern Avenue
Los Angeles, California 90063



United We Stand

DAVID LAMBERTSON
Interim Director

TO ENRICH LIVES THROUGH EFFECTIVE AND CARING SERVICE

TELEPHONE: (323) 267-2101
FACSIMILE: (323) 264-7135

June 11, 2003

To: Each Supervisor

From: Dave Lambertson
Interim Director

Subject: **PROTEST PANEL – AUTOMOTIVE FLEET SERVICES CONTRACT**

A Protest Panel was convened on June 5, 2003 in response to Parking Company of America's (PCA) protest of ISD's recommendation to award the vehicle maintenance and repair services contract to Johnson Controls, Inc. (JCI). The panel was comprised of representatives from the Chief Administrative Office, Chief Information Office, and Department of Public Works.

The Protest Panel's report is attached. In brief, the Panel concluded that:

- ISD did follow the RFP as written, and based on existing County contracting policy, there is no reason to conduct a re-solicitation.
- The primary focus of PCA's issues related to County contracting policies (i.e., as opposed to the accuracy of the RFP evaluation).
- ISD should allow PCA to use the County as a reference.

One issue raised by PCA was the inclusion and evaluation of County references. The RFP allowed the use of County references for meeting the minimum requirements (i.e., the demonstrated experience of fleet management and repair services) contained in the RFP. However, ISD requested non-County references in the area of performance. ISD designed the RFP in this manner so as not to disadvantage proposers who did not have County contracts.

After hearing PCA's concerns and ISD's response, the Protest Panel recommended that ISD assume PCA would have received the maximum credit for a County performance reference, determine if this would impact the selection of a recommended contractor, and report the result.

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In keeping with the Protest Panel's recommendation, attached is the revised Proposal Evaluation document that includes the additional 1,500 maximum points for a County reference for PCA. The addition of these points does not alter the recommendation to award an automotive maintenance and repair services contract to JCI.

If you have any further questions, please feel free to contact me at (323) 267-2101 or Ms. Daphne Bell at (323) 267-2109.

DL:DB:z
Attachment

c: Board Deputies
David E. Janssen, Chief Administrative Officer
Lloyd A. Pellman, County Counsel
James A. Noyes, Department of Public Works
Jon Fullinwider, Chief Information Officer
Francis E. Scott, County Counsel
Bob Davis, Chief Information Office
Nan Flette, Chief Administrative Office
Paul Goldman, Department of Public Works

REPORT OF PROTEST PANEL

Request For Proposals No. 103192ML
for Vehicle Fleet Maintenance and Repair Services

Parking Concepts of America (PCA) protested the proposed award of this contract to Johnson Controls World Services, Inc. (JCI). This panel was convened on June 5, 2003, at 1:30 P.M., at 1100 N. Eastern Avenue, Los Angeles, to hear and consider the concerns voiced by PCA, and the responses thereto by the County's Internal Services Department (ISD).

The panel consisted of the following members: Nan Flette, Chief Administrative Office; Robert Davis, Chief Information Office; and Paul Goldman, Department of Public Works.

PCA's presentation was made by its attorney, Peter Dubrawski. Also in attendance from PCA were Alex Chavez, Alex Martin Chavez, Helen Mouat, Kerry Inouye and Dave Lawson.

ISD's response was made by Dave Lambertson, Interim Director. Also in attendance for ISD were Daphne Bell, Kathy Hanks, and Mila Lebovich.

Francis E. Scott, Principal Deputy, represented the Office of the County Counsel.

SCOPE OF PANEL'S REVIEW

- Review the Request for Proposal (RFP) process to determine if ISD followed the RFP as written.
- 2 Review and consider PCA's concerns regarding the fairness of the RFP process.
- 3 Consider PCA's request that the proposed award of contract to JCI be rejected, and that the RFP be redrafted and resolicited for bids.

FINDINGS

Based on the information provided by both PCA and ISD at the June 5th meeting, the discussion at the meeting and a review of the RFP documents, the members of the Panel reached a consensus on the following findings:

- 1 ISD followed the RFP as written.
- 2 PCA's County reference should have been included in evaluating its qualifications under paragraph 3.4.1 of the RFP.
- 3 The majority of PCA's concerns relate to County contracting policies, which are matters solely within the purview of the Board of Supervisors.
- 4 Under existing County contracting policies, there is no basis to redraft and resolicit the RFP.

PCA'S CONCERNS AND ISD'S RESPONSES:

PCA states it was disadvantaged by not having its County reference evaluated as part of its performance history under paragraph 3.4.1.

ISD responds that disallowing the County reference was not discriminatory against PCA, since no proposer was allowed to include it for performance history evaluation, including JCI. ISD points out that County reference was considered for meeting the minimum experience requirement of the RFP. ISD's purpose in disallowing the reference for performance history was to create a level playing field for all proposers, so that incumbents would not have an advantage.

Panel Finding

The Panel takes note that PCA's largest reference is its County contract, and believes that it was inconsistent with other provisions of the RFP to exclude it in evaluating PCA's performance history, even though the RFP specifically requires such exclusion. ISD utilized the County reference in determining that PCA met the minimum qualifications of the RFP. The Panel believes there was some inconsistency in allowing County references for the minimum experience requirement, but not for the performance history evaluation. The Panel concludes that, to maintain an equity in the use of references, PCA's County reference should have been included in evaluating its qualifications under paragraph 3.4.1 of the RFP. The Panel recommends that, in order to determine the impact, if any, of evaluating PCA's County reference for performance history, ISD should make the assumption that PCA would have received maximum credit for that reference, and report the result. If the result would change PCA's ranking, it is recommended that all proposals with County references should be reevaluated to take into consideration such references for performance history.

- 2 PCA states that the RFP was unfair to smaller proposers such as itself in that it allows larger proposers to bid a low cost to the County with the intention of renegotiating an amendment later on to recoup its initial loss. PCA contends that JCI will be able to force, have the right to, or be granted the ability to renegotiate the contract terms.

ISD responds that the RFP requires fixed service rates for the three-year term of the contract, and only allows for a cost of living adjustment (COLA) in the two optional extension years, in conformity with the County's COLA policy. In addition, the RFP permits the County to initiate discussions with the contractor on annual adjustments for changes in utility, computer system and building maintenance costs which the County provides to the contractor and either bills to him or deducts from his monthly invoice.

Panel Finding

The Panel found no irregularities in the RFP process or in the application of County contracting policy and practice. It also found no basis, and an erroneous interpretation of the RFP, for PCA's assertion that JCI will be able to force a

renegotiation of contract terms in later years in order to recoup alleged losses in making a “low” bid.

- 3 PCA contends that the RFP was too “open-ended” to allow a proposer to accurately determine its costs. This “open-endedness” results from a lack of a guarantee as to the number of vehicles which will be serviced under the contract, and from the ability of the County to change the scope of work thereunder. PCA made its proposal based upon its experience with the County under its existing contract, believing that the servicing of vehicles as stated in the RFP was unrealistically high. It points to the failure of County departments to bring in vehicles for preventive maintenance as an example. PCA states that the RFP should have stated a more realistic number for vehicles which would actually be serviced under the contract.

ISD responds that the RFP was drafted with the intention of not making guarantees, and that its parameters were clearly set forth. One purpose of the RFP was to make the successful proposer share the risk of uncertainty as to what the County’s needs would be over the life of the contract. ISD notes that under its existing contract with the County, PCA has the duty to monitor the agreement to insure that preventive maintenance occurs on schedule. This provision is continued in the current RFP to require the contractor to monitor the agreement to ensure usage. ISD also notes that County departments have the ability to seek separate Board-approved agreements for their fleet vehicles.

Panel Finding

The Panel found no irregularities in the RFP process or in the application of County contracting policies. All bidders were to develop their proposals based on the parameters of the RFP. PCA’s use of its experience in preparing its bid may have disadvantaged it as PCA stated, but this was a PCA business decision. Furthermore, all proposers were required to evaluate the business risks inherent in the RFP, so all were treated equally.

- 4 PCA states that the RFP should have recognized the union and the union contract, and that, by applying union labor rates to JCI’s proposal, it is clear that JCI would lose money on the contract unless it “renegotiated” for more money later on. It contends that PCA’s proposal is based on union wage rates.

ISD responds that this RFP is for a Proposition A contract which does not require the contractor to have a labor union contract. The County’s Living Wage requirement establishes the lowest wage that a contractor may pay employees under a Proposition A contract. There is a provision under the Living Wage ordinance that allows for the payment of less than the Living Wage if the contractor has a collective bargaining agreement which specifically supersedes the Living Wage requirement. ISD also states that it is not concerned if the contractor fails to make a profit under the contract; its concern is to obtain the best overall agreement for the County.

Panel Finding

The Panel found no irregularities in the RFP process or in the application of County contracting policies, including the Living Wage policy. While a requirement to use union wages would have been advantageous to PCA, this is not a requirement of County policy. The County policy only requires its contractors to pay a Living Wage pursuant to County ordinance.

- 5 PCA questions ISD's methodology in scoring for the evaluation for cost of parts. ISD states that it applied a consistent methodology in an equal fashion to all bidders.

Panel Finding

Based on ISD's explanation, the Panel believes that the scoring for the cost of parts was handled equitably. ISD should report the result of its evaluation of PCA's proposal for cost of parts in order to determine what effect, if any, it had on the selection process.

CONCLUSION

In summary, the Panel did not find any discrepancy with ISD's handling of the RFP process nor application of the provisions of the RFP. When questioned by Panel members, PCA concurred and indicated that its concerns were related to the structure of the RFP and alternate approaches that it believed would be in the best interest of the County.

While ISD did follow the provisions of the RFP, the Panel believes that exclusion of the County references for the performance history evaluation was inconsistent with other provisions of the RFP and should not have been excluded from the evaluation process.

The Panel recommends that ISD should include PCA's County reference in evaluating its qualifications under 3.4.1 of the RFP and make the assumption that PCA would have received maximum credit for that reference, in order to determine what effect this would have on the selection process, if any, and report the result. If the result would change PCA's ranking, it is recommended that all proposals with County references should be reevaluated to take into consideration such references for performance history.

The other issues raised by PCA are matters of contracting policy within the purview of the Board of Supervisors' discretion. ISD's RFP was consistent with the application of County policy, and the Panel found no inherent unfairness to or unequal treatment of PCI or any other proposer by the application of these policies.

Dated: 6/10/03


ROBERT DAVIS


NAN FLETTE


PAUL GOLDMAN

**VEHICLE FLEET MAINTENANCE AND REPAIR SERVICES RFP #103192ML
PROPOSAL EVALUATION SUMMARY RESULTS**

	JOHNSON CONTROLS	SERCO	SKE	PCA
PROPOSER'S PREVIOUS TOTAL SCORES (100% - 50,000 POINTS MAX)	46,165	41,216	40,485	32,393
COUNTY REFERENCES ADDED	0	0	0	1,500
TOTAL REVISED SCORES (100% - 50,000 POINTS MAX)	46,165	41,216	40,485	33,893